

STATE OF INDIANA) IN THE MARION SUPERIOR/CIRCUIT COURT
) SS:
COUNTY OF MARION) CAUSE NO. _____

49D11 07 08 PL 0 33 1 8 6

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
JENNIFER BEATTY,)
)
Defendant.)

FILED

129

AUG 09 2007

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this complaint, the Defendant was an individual engaged in the sale of items via the Internet from her principal place of business located in Marion County at 9027 Greenlee Circle, Indianapolis, Indiana, 46234.

FACTS

3. Since at least December 1, 2005, the Defendant has represented she would sell items via the Internet to consumers.

A. Allegations regarding Consumer Silke Winter's Transaction.

4. On or around December 1, 2005, the Defendant entered into a contract with Silke Winter ("Winter") of New York, New York, wherein the Defendant represented she would sell a designer handbag to Winter for a total price of Nine Hundred Twenty-Seven Dollars (\$927.00), which Silke paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale she would deliver the designer handbag within a reasonable period of time.

6. As of today, the Defendant has yet to either deliver the handbag, or to provide a refund to Winter.

B. Allegations regarding Eva H. Muttenthaler's Consumer Transaction.

7. On or around August 23, 2006, the Defendant entered into a contract with Eva H. Muttenthaler ("Muttenthaler") of San Francisco, California, wherein the Defendant represented she would sell a used Hermes J 35cm Birkin handbag to Muttenthaler for a total price of Five Hundred Dollars (\$500.00), which Muttenthaler paid.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale she would deliver the Handbag within a reasonable period of time.

9. As of today, the Defendant has yet to either deliver the handbag, or to provide a refund to Muttenthaler.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

10. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 above.

11. The transactions referred to in paragraphs 4 and 7 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

12. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

13. The Defendant’s representations to consumers, including Winter and Muttenthaler, that she would sell handbags to those consumers, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, as referenced in paragraphs 4 and 7, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

14. The Defendant’s representations to consumers, including Winter and Muttenthaler, that she would be able to deliver the handbags, or otherwise complete the subject of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known she could not, as referenced in paragraphs 5 and 8, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

15. The Defendant’s representations to consumers, including Winter and Muttenthaler, that the consumers would be able to purchase the handbags as advertised by the Defendant, when the Defendant did not intend to sell the items, as referenced in

paragraphs 4 and 7, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

16. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 7, and 8, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Jennifer Beatty, and issue a permanent injunction, pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;
- b. representing, expressly or by implication, the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know she cannot; and
- c. representing, expressly or by implication, that consumers will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

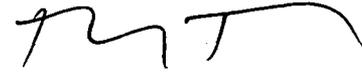
- a. cancellation of all of the Defendant's unlawful contracts with consumers, including but not limited to, Silke Winter and Eva H. Muttenthaler;
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant, including but not limited to Silke Winter and Eva H. Muttenthaler, in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:



Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of the Attorney General
Consumer Protection Division
302 West Washington St., IGCS 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300